



Analysis on Public-Private Partnership Kosovo



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CREDITS

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This document has been produced as a part of the project “CSOs as equal partners in the monitoring of public finance“ which started beginning of 2016 and is implemented by a consortium of 10 organizations from 7 countries and will last for four years.

The aim of the project is to improve the transparency and accountability of policy and decision making in the area of public finances through strengthening the role and voice of NGOs in monitoring the institutions that operate in the area of public finances. In this way, the project will strengthen CSO knowledge of public finance and IFIs and improve CSO capacities for monitoring. Additionally, it will help advocate for transparency, accountability and effectiveness from public institutions in public finance. Moreover, this project will build know-how in advocating for sustainability, transparency and accountability of public finance and IFIs. This project will also increase networking and cooperation of CSOs on monitoring of public finance at regional and EU level. Lastly, it will increase the understanding of the media and wider public of the challenges in public finance and the impacts of IFIs.

Key project activities are research and monitoring, advocacy, capacity building and transfer of knowledge/practices and networking in the field of the 4 specific topics: public debt, public-private partnerships, tax justice and public infrastructure.

More information about the project can be found on <http://wings-of-hope.ba/balkan-monitoring-public-finance/> and on the Facebook Page Balkan Monitoring Public Finances





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1. UNDERSTANDING PPPS IN KOSOVO

PPP experience in Kosovo remains tardy, and it only commenced in 2008, with Kosovo's independence declaration, when the government announced its directive to support the implementation of PPPs, as a way to stimulate investment in public infrastructure and ensuring public services. A dedicated law (No.03/I-090) on "[Public-Private-Partnerships and Concessions in Infrastructure and the Procedures](#)" followed suit in 2009. A dedicated unit and an inter-ministerial committee on PPPs were also established. Since then, Kosovo has been able to develop and conclude two relevant PPP transactions: (i) A complex transaction for the *Prishtina International Airport*, and; (ii) the public transport services in the Municipality of Peja – with a combined capital stock of 1.7% of GDP at the end of 2014. Another PPP for urban waste processing in the Municipality of Suhareka is in the process to being concluded. According to IMF, Kosovo has not yet made extensive use of Public-Private Partnerships, but several projects are already projected. However, several projects at the general government level are being developed; either at the feasibility or contract procurement stage, with an estimated construction cost of about 1.5% of the GDP. Also, the IMF stresses out that the vast majority of the given projects are projected to be fully funded by users, with no guarantees from the government. However, when PPPs are done incorrectly, they may generate considerable problems – although they hold substantial benefits as an infrastructure delivery tool. Bearing that in mind, governments and relevant public authorities should deliberately ensure that PPP programs and projects achieve their projected goals, while maximizing value for money.¹ Additionally, new PPP agreements have recently been concluded, among which, the Project on Skiing Center "Borea", in Peja, and the construction of a new cemetery in Landovica, Prizren, were both awarded with a PPP contract.² Although the current size of the PPP program is modest with 1.7 percent of GDP in 2014, it is expected to expand over time.

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Public-Private Partnerships in Kosovo can be processed through concessions or public contracts, with a private partner. While typically they stand for an agreement between public and private operators, the given infrastructure is financed, partially or entirely by the private partner. As such, public-private partnerships, as defined under the new law³, refer to any contractual or institutional cooperation between

¹ "Public-Private Partnerships", Ministry of Finance.

http://www.pppkosova.org/repository/docs/public_private_partnerships.pdf

² "Partnerships Kosovo" Ministry of Finance.

<http://pppkosova.org/?cid=1,1>

³ Law on Public-Private-Partnership, Law No. 04/L-045, Republic of Kosovo.

<http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20public%20private%20partnership.pdf>



one or more Public Authorities, and one or more Private Partners, where the latter, on behalf of the Public Authority, delivers a public-interest service.

The party which holds a better position in managing each arisen risk is carefully deliberated, and as such, the risks are accordingly divided among partners. In Kosovo, PPPs serve as a public procurement tool, which focus on the payment for the successful delivery of services (transferring the performance risk to the private partner), and the agreements are output/performance-oriented (compared to the traditional delivery of public services, which are input-oriented). On a more narrower sense, according to the IMF, the fiscal costs and fiscal risks associated with PPPs are neither systematically assessed nor reported. Although PPPs are required to submit detailed annual budgetary reports to the PPPC, these reports capture and disclose a limited description and analysis of risk exposures. The PPP unit does not assess or estimate the fiscal risks of the existing projects (e.g., related to termination clauses) or the projects in the pipeline (e.g., risks related to availability of land), and as such, the government's accountability for managing government risk exposure under PPPs, remains limited. Accordingly, considering the increasing number of Kosovo PPP projects in the pipeline, and the absence of legal ceilings on government exposure to the potential fiscal risks, the government's handling of and managing risks remains of immense importance. Additionally, according to the IMF, there are no legal provisions on the current setting that require PPPs to include PPP-related assets and liabilities, or other related information, within the budget and annual financial statements.

Since its declaration of independence in 2008, Kosovo is equipped with a Policy Directive on PPPs, according to which, public authorities are required to carry out PPP projects only through transparent, impartial, and competitive procedures. The development of PPP system is guided and ensured by the following key institutional bodies: The Public-Private Partnership Committee (PPP Committee), an Inter-ministerial standing body, chaired by the Minister of Finance with the authority over PPP transactions and PPP policy in Kosovo, and the *Central PPP Department* (PPP Department), under the Ministry of Finance. With the assistance offered by the given bodies, Kosovo is continuously retaining its skills and knowledge to initiate the process of communication with the private sector, and as such, provide them, through PPP alternatives, with the necessary public infrastructure services.

Considering there is a growth of fiscal pressure, and an accelerated expansion of infrastructure needs, Public Authorities are increasingly choosing PPPs as the right choice for infrastructure and public service delivery. While the government highly acknowledges the alternatives PPPs provide to address the infrastructure gap, it also recognizes the complexity associated with PPPs along with its significant responsibilities. Public Authorities, as such, are assigned long-term obligations as a result of long-term



transactions. Transforming from a traditionally-established public sector model of public service delivery onto another, within which, private and public sectors collaborate just fine, it is not an easy task to perform. To successfully accomplish such transformation, Kosovo shall, arguably, overcome important political, legal, regulatory, and institutional hurdles. PPPs, however, shall not offer the best alternative for all potential infrastructure and public service projects. Having said that, Public-Private Partnerships must ensure the equivalent or more cost-effective alternatives than those previously offered by the traditional public sector. Cost-effective alternatives, furthermore, are not, by no means, associated with the cheapest provided bid or the lowest price for an asset, but instead, such alternatives equate with meticulous and in-depth investigation when opting for the best long-term solution for public service delivery. Those require diligent and careful consideration of the total long-term costs of infrastructure, and service delivery along with its public benefits. Reliable resources and expertise are required to monitor and close the performance of the PPP transactions throughout the agreement's life cycle, as soon as PPP are designed and awarded. PPPs, moreover, might cover decades of construction monitoring to turnkey delivery, and traditional procurement of infrastructure, on the other hand, might cover a few years. To provide elaborate guidance on the identification, development and implementation of PPPs and its concomitant responsibilities, Kosovo has established a standalone legislation regulating PPPs, including relevant bodies and policies.

Since its declaration of independence in 2008, Kosovo is equipped with a Policy Directive on PPPs, according to which, public authorities are required to carry out PPP projects only through transparent, impartial, and competitive procedures. Furthermore, the [Law on Public-Private Partnerships and Concessions in Infrastructure and the Procedure for Their Award](#), enacted in 2009, was the first standalone legislation, which particularly tackled PPPs. Importantly enough, prior to the previously mentioned law, the process of awarding concessions was directed by the *Law on Procedure to Award Concessions NO. 02/L-44*, enacted in 2005. Under the 2009 Law, with the abrogation of the 2005 Law, key institutions were established. The "PPP Inter-ministerial Committee" (PPP-ISC), for instance, headed by the Minister of Finance and Economy, was established to control and review PPP transactions, and a PPP Central Unit, organized under the Ministry of Economy and Finance, established to support the PPP-ISC and contracting authorities, and amongst other, overlook the process of securing potential transactions. The Law on PPP and Concessions in Infrastructure and Procedures for their Award (No.03/L-090), prepared in accordance with UNCINTRAL,⁴ with technical assistance provided by United States Agency for International Development (USAID), was voted and came into effect, as

⁴ The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations General Assembly by its Resolution 2205 (XXI) of 17 December 1966 "to promote the progressive harmonization and unification of international trade law"



previously mentioned, in August 2009. Under the suitable legal and institutional framework for PPPs, came the first PPP project on the operation and expansion of Prishtina International Airport, “Adem Jashari”.⁵ The project, according to the former Prime Minister,⁶ emphasized Kosovo Government’s commitment to facilitating the inclusion of private capital in infrastructure, and amongst other, seeking for greater efficiency when using public resources. A PPP transaction was also awarded to the Municipality of Peja, for the provision of urban bus service, and another, although its contract remains pending, was granted to the Municipality of Suhareka, for the provision of waste collection. In 2011. Further revisions of the given PPP law were prompted as a result of Kosovo Government’s dedicated efforts to harmonize the country’s legislative framework with the EU directives, on public procurement. In December 2011, as such, the Law on Public Private Partnership (No. 04/L-045)⁷ was passed. Under the new law, PPP-ISC and PPP Unit were converted onto today’s PPP Committee and the Central PPP Department, within the restructured Ministry of Finance. Prior to the tendering and signing procedures, the PPP has the responsibility to approve the given projects.

In terms of the PPP maturity in the region, Croatia and Greece have already generated already generated success, where Croatia’s government policies favor BOT schemes within the transport sector (Istrian “Y” Highway, the first PPP project in Croatia), energy (“Lukovo Sugarje” project), and water management (sewage treatment factory in Zagreb). The new legislation is primarily designed to generally alleviate concessions. Additionally, both countries have established an independent governmental agency, which is responsible for evaluating, approving, and monitoring of PPP projects’ implementation, maintaining the national register of PPP contracts, and applying the best internationally known practices of PPPs.⁸ Moreover, according to the European Investment Bank, 2016, United Kingdom and France, both members of European Union, were generating the utmost success in the PPP market for the past five years.⁹

Kosovo’s PPP system has received a slightly large assistance for its development, including USAID’s continuous support through its Growth and Fiscal Stability Initiative, (GFSI) program. Through its technical advisory assistance, GFSI provides support to the PPP Department, on developing transactions

⁵ “Kosovo: PPP Units and Related Institutional Framework”, European PPP Expertise Center, June 2014.

http://www.eib.org/epec/resources/publications/epec_wbif_kosovo_ppp_unit_and_related_institutional_framework.pdf

⁶ The Republic of Kosovo: The Office of the Prime Minister, March 2011.

<http://www.kryeministri-ks.net/index.php/2009/03/behgjet?page=2,9,1939>

⁷ “Law on Public-Private Partnership”, Law No. 04/L-045, Republic of Kosovo.

<http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20public%20private%20partnership.pdf>

⁸ “Hyrje ne Partneritet-Publiko-Private”, Ministry of Finance, 2012.

<http://pppkosova.org/repository/docs/Doracaku%20i%20pjesemarresve%20-%20Hyrje%20ne%20PPP.pdf>

⁹ “Review of the European PPP Market 2016”, European PPP Expertise Center, 2016.

http://www.eib.org/epec/resources/publications/epec_market_update_2016_en



by working with public authorities in assessing pre-feasibility and transaction viability. This system, amongst other, is established to guide and monitor one-on-one training in transaction development. The department also, amongst other, received support on capacity growth from GFSI, which assisted in the development of general PPP training and outreach for delivery to public authorities. Apart from the guidelines, the recommended procedures and tasks required to effectively complete the following phases of PPP transactions, which include, initially performing the pre-feasibility analysis, followed by the development and review of transaction documents, to the process of conducting and managing transactions. In order to successfully identify, develop, conduct, and last, but not the least, manage transactions, the given guidelines provide continuous thorough support. In 2012, for instance, the PPP department managed to fruitfully provide trainings on the PPP process to Public Authorities, effectively directed by the guidelines and the USAID GFSI's support. With its support, USAID explicitly aimed to improve the Public Authorities' skills to successfully develop PPP transactions. In order to positively evaluate the suitability and potential viability of a proposed PPP transaction, the strategic advisory provides the required assistance to the prospective contracting authorities, be they ministries or municipalities. Additionally, the specific cases that were ahead of others, in terms of their implementation phase, they are, as such, provided with the additional support on developing feasibility studies and legal due diligence, including the drafting of PPP tender documents and certain agreements.

PPPs remain prone to impeding the integrity of the evaluation and the selection process of capital projects, considering they are being selected and approved separately from other public investment projects.¹⁰ Bearing in mind that PPPs entail fiscal costs and potential risks for the government, under the [Law on PPP](#), moreover, the Ministry of Finance is granted the authority to safeguard the fiscal risks arising from PPP projects. The Public-Private Partnership Committee, (PPPC),¹¹ remains responsible for managing and coordinating policies, and approving PPP projects. Having said that, to ensure a sustainable impact, the MoF possesses the authority to decide on terminating projects of risky nature, and those deemed financially unaffordable. A well-established PPP unit, under the Ministry of Finance, serves as an advisory body for providing services to contracting agencies, conducting value-for-money analyses, and evaluating projects' budget affordability.

¹⁰ "REPUBLIC OF KOSOVO, PUBLIC INVESTMENT MANAGEMENT ASSESSMENT" IMF, April 2016.
<https://www.imf.org/external/pubs/ft/scr/2016/cr16100.pdf>

¹¹ The PPPC has five permanent members: The Minister of Finance and four other members having the rank of Deputy Prime Minister or Minister, "REPUBLIC OF KOSOVO, PUBLIC INVESTMENT MANAGEMENT ASSESSMENT", IMF, April 2016.
<https://www.imf.org/external/pubs/ft/scr/2016/cr16100.pdf>



Research shows that the Prishtina International Airport concession is lacking a devoted project management team, and the PPP Department itself is providing the latter a contract management. However, under the Law on PPPs, the previously mentioned department is not granted the authority to provide management services; the PPP department is required to monitor and comment on the level of compliance of a contracting authority and a private partner, with PPP agreement terms.¹² Moreover, the law obliges the contracting authority to establish a qualified contract management team for monitoring and ensuring that the private partner's acts are in accordance with the terms of the PPP agreement. According to the public authorities, however, due to the underdevelopment of the current PPP market in Kosovo, they have failed to find a substitute for the PPP department although there have been tenders launched for consultancy services. On a similar vein, problems emerged as soon as the PPP agreement was signed with the Municipality of Peja, the first PPP transport project at municipal level, considering that the municipality failed to ensure the given rights to the concessionaire. Although the Municipality of Peja initially aimed to increase the usage of the public transport by the citizens, the urban transportation was forced to compete with other public operators, which considerably affected the revenues expected by the concessionaire. According to the PPP Department, such agreement was suspended considering that no viable solutions came out of the discussions among the municipality and the concessionaire. To add more to that, there is no available data on whether the concessionaire has undertaken legal initiatives against the municipality for breaching the PPP agreement.

Through PPPs Kosovo is provided with the opportunity to modernize and further expand its public infrastructure and services. With a new law on Public-Private-Partnerships and the establishment of a centralized PPP Unit in the Ministry of Finance and Economy, both institutional and legal framework provide the line ministries, POE's, municipalities and other budgetary institutions, with the opportunity to implement PPP within various sectors. However, as mentioned throughout the analysis, PPPs are only the right choice for specific suitable projects, where the PPP alternative is initially projected to deliver more fruitful outcomes to any alternative delivery model. At the end of the day, PPPs are only one a tool, amidst many, to assist the government to provide the needed public infrastructure services.

¹² "Comparative Analysis of Lessons Learned from Recent Development in Implementation of Public Private Partnership Projects in the Western Balkan Region". Regional School of Public Administration, 2015
[file:///C:/Users/Administrator/Downloads/Public%20Private%20Partnership%20Projects Comparative%20Analysis%20\(1\).pdf](file:///C:/Users/Administrator/Downloads/Public%20Private%20Partnership%20Projects%20Comparative%20Analysis%20(1).pdf)



RECOMMENDATIONS

In terms of *recommendations*, Kosovo should thoughtfully consider:

- Among other, providing trainings to public authorities, on outlining the role of PPPs on offering infrastructure services. The trainings would also educate the participants on determining whether PPPs are the right choice, so the government is granted with the opportunity to pave the way for better outcomes for the common good.
- Providing trainings to public authorities and private partners on correctly defining their respective roles and responsibilities.
- When taking into account the continuous deploying of Turkish employers from Turkey in Kosovo,¹³ for the construction of the International Prishtina Airport, Kosovo should rather focus on encouraging local employment of local capacities of the country.
- Moreover, Kosovo should consider establishing a pipeline of the upcoming PPP transactions, so the interested stakeholders, including the wide public, are kept updated with information regarding the planned projects to be implemented in the future.

¹³The Airport Concession". RIINVEST INSTITUTE, 2015.

http://www.riinvestinstitute.org/uploads/files/2016/September/21/KONCESIONIMI_I_AEROPORTIT_eng1474446448.pdf



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